BLAKE A. FIELD
3750 Doris Place
Las Vegas, Nevada 89120
(702) 436-9798
Pro Se Plaintiff

Blake A. Field VS Google, Inc., Doc. 29

2005 JUN -1 P 12:00

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BLAKE A. FIELD,

Plaintiff,

vs.

GOOGLE, INC., a corporation

Defendant.

AND RELATED COUNTERCLAIMS

Case No. CV-S-04-0413-RCJ-LRL

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO EXTEND DISCOVERY

COMES NOW Plaintiff Blake A. Field to file his Opposition to Defendant's Motion to Extend Discovery.

I. INTRODUCTION

As Defendant represents in its Motion, on April 13, 2005, this Court entered a Stipulation and Order extending the time to complete certain fact witness depositions, leaving all other discovery deadlines intact. (See Motion at pp. 2, lines 20-24.) Contrary to Defendant's representations, the need to move back expert disclosures was not inadvertantly overlooked by the parties in that stipulation. Plaintiff certainly considered it, however, had no issue meeting the deadline as it then existed. Moreover, it is clear that Defendant likewise considered the expert disclosure deadline and determined either (1) there was no need for expert evidence in this matter or (2) properly reasoned that Plaintiff's deposition testimony in no way could affect its expert's opinions.

On May 13, 2005, Plaintiff conducted the deposition of Defendant's Person Most Knowledgeable regarding the standard operation of the Google cache and the inclusion of Plaintiff's works in the Google cache. Apparently, only after this revealing deposition does Defendant desire to attempt to turn this matter into a battle of the experts. Realizing its time

29

Dockets.Justia.com

constraints, Defendant endeavored to have Plaintiff stipulate to extend expert designations, which on May 17 Plaintiff agreed to consider. Further rumination on the matter during the night of the 17th led Plaintiff to inform Defendant the following morning that Plaintiff was not amenable to such a stipulation. Plaintiff's position remains rooted in the notion that Plaintiff's deposition testimony could in no way affect Defendant's expert discovery needs.

II. ARGUMENT

A. Plaintiff's deposition testimony could in no way affect Defendant's expert's opinions.

Defendant posits that Plaintiff's deposition testimony is necessary for its expert to express his opinions. It is a ponderous notion that Plaintiff's testimony could affect or inform such opinions. Defendant has already admitted that each of the web pages containing Plaintiff's works were stored within the Google cache, and that Google reproduced and distributed each of the cached copies of those pages to at least one internet user. Thus, this matter is properly an affirmative defense case – indeed, Defendant's counterclaims assume Defendant's use of Plaintiff's exclusive rights of reproduction and distribution, yet asserts affirmative defenses against those actions in a declaratory relief setting.

Certainly, Plaintiff's testimony could only inform Defendant's affirmative defenses/counterclaims of implied license and estoppel – testimony which in no way could affect the expert's opinion. The notion of expert opinions on issues of implied licence and estoppel is incomprehensible – such matters go solely to the relations of parties. Rather, Defendant's purported internet expert would necessarily restrict his opinions to Defendant's Digital Millennium Copyright Act (17 U.S.C. § 512(a)-(d)) affirmative defenses – technical defenses which factual evidence supporting such would be in the exclusive control of Defendant itself. Thus, there never was a need to elicit Plaintiff's testimony prior to Defendant's expert designation, which is precisely why the deadline to designate was not moved back by stipulation.

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing PLAINTIFF' OPPOSITION TO DEFENDANT'S MOTION TO EXTEND DISCOVERY was served on June 1, 2005 by placing same in the United States mail, postage pre-paid to:

Kelly A. Evans
Snell & Wilmer
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89109
and
David H. Kramer
William O'Callaghan
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
Attorneys for Defendant Google, Inc.

Blake A. Field